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FEDERAL COMMUNICATIONS COMMISSION  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
Amendment of Part 90 of the ) PR Docket No. 92-79  
Commission's Rules to Eliminate )  
Separate Licensing of End Users )  
of Specialized Mobile Radio Systems )

To: The Commission

COMMENTS OF RAM MOBILE DATA USA LIMITED PARTNERSHIP

RAM Mobile Data USA Limited Partnership ("RMD") supports the Commission's proposal in the above referenced Notice of Proposed Rule Making (the "Notice") to eliminate SMR end user licensing requirements and to reduce other regulatory burdens on SMR licensees with respect to end user reporting requirements. At the same time, as discussed below, RMD is concerned that certain aspects of the proposed alternative system would unnecessarily increase burdens on SMR system licensees.

In addition, RMD shows that the proposed method for calculating loading does not sufficiently take into account the very different operating and customer service requirements of a nationwide system. RMD believes that, ultimately, the best approach would be to eliminate loading requirements for nationwide systems entirely and, instead, rely upon strenuous system construction requirements, as proposed by the Commission with respect to 900 MHz Phase II licensing proceeding.<sup>1</sup> Pending such broader relief, however, RMD urges that end user calculations for

<sup>1</sup> See Notice of Proposed Rule Making, FCC 89-328 (Dec. 18, 1989) (the "Phase II Proceeding"), ¶ 41; Comments of RAM Mobile Data, Inc., PR Docket No. 89-553 (April 16, 1990), ¶ 18.

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nationwide systems be made on a nationwide system-wide basis, since that is the basis upon which such service is provided.

I. END USER LICENSING SHOULD BE ELIMINATED.

RMD agrees with the Commission that the elimination of end user licensing requirements will "reduce significantly unnecessary reporting burdens on industry and administrative costs to the Commission, thereby increasing efficiency" in the licensing and operation of SMR systems. Notice, ¶ 1. RMD believes that the Commission's proposal is particularly well-timed in light of the efforts by many in the SMR industry, RMD among them, to bring a greater array of service offerings to more customers, more efficiently, over wider areas, than generally thought possible just a few years ago. The Commission's proposal is also consistent with other changes that have been made over the past few years by the Commission to remove unnecessary regulatory restrictions on SMR operations -- for example, allowing SMRs to provide service to individuals and the federal government -- that have greatly increased and changed the nature of the industry's customer base.

The expansion of SMR service made possible by the conversion to digital technology, the development of wide area regional and national systems, and the Commission's deregulatory efforts over the past few years makes individual end user licensing impractical. In this regard, end user licensing imposes a wholly unnecessary burden on increasing numbers of business customers, small and large, and individual users of the service. These problems are further complicated when sophisticated SMR system services are purchased by entities, such as credit card companies, and packaged with related services for their customers, who will actually operate the individual end units. Furthermore, end user licensing effectively requires disclosure of customer lists, a practice which places SMR operators at a competitive disadvantage vis-a-vis other mobile communications service providers who are not required to disclose such sensitive and valuable information. Finally, when customers subscribe to a national service, such as that provided by RMD, they

cannot identify the SMR station(s) from which they intend to receive service. Users of the RMD network have access to each of the more than 60 ten-channel SMR systems comprising the network, and virtually all users have occasion to use numerous different stations on a regular basis. For many users, the concept of a "home" system is simply inapplicable; the user of RMD's service in conjunction with electronic mail, for instance, would almost never use the service when at "home," but would almost exclusively use the service when on travel.

**II. THE ELIMINATION OF END USER LICENSING DOES NOT REQUIRE THE IMPOSITION OF OBLIGATIONS ON SMR LICENSEES TO CONTROL THE OPERATION OF CUSTOMER-SUPPLIED EQUIPMENT.**

The primary function of end user licensing has been to supply the Commission with information regarding SMR system loading. It follows that reliance will need to be placed on SMR licensees to ensure the accuracy of loading information (to the extent loading remains relevant), if end user licensing is eliminated, as proposed. It does not follow, however, that SMR licensees should be held responsible for the proper technical operation of customer-supplied end user terminals. In this regard, RMD urges that the analogous rule applicable to the operation of mobile units on a cellular system should apply: "The proper installation, maintenance and repair of ... mobile stations shall normally be the responsibility of the cellular system licensee except that customer provided equipment shall be the responsibility of the customer." 47 C.F.R. § 22.912(a).

Furthermore, the fact that SMR end users would no longer be licensed would not make them immune from the applicability of the FCC's rules, any more than are cellular telephone users. The clearest example of this principle was enunciated by the Commission in its recent decision which authorized the use of cellular telephones in airplanes, while on the ground, but not while airborne<sup>2</sup>. In reaching

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<sup>2</sup> See Report and Order, FCC No. 91-399, 7 FCC Rcd. 23 (1991).

this decision, the Commission rejected arguments that the only way to prevent non-licensee customers from using cellular telephones in the air is to prohibit the installation of cellular telephones on aircraft altogether. To the contrary, the Commission emphasized that non-licensed cellular users who willfully and repeatedly violate Commission rules prohibiting such use are subject to forfeitures under Section 503 of the Communications Act<sup>3</sup>. The Commission also required the posting of notices with aircraft cellular telephones informing the customers of the restrictions on use.<sup>4</sup> A similar notice requirement could be imposed on SMR licensees and equipment manufacturers requiring them to inform their customers of applicable use restrictions.

### III. LOADING ON AN INTEGRATED NATIONWIDE NETWORK CAN BE CALCULATED ONLY ON A NATIONWIDE BASIS.

The Commission's proposed standard for measuring loading based upon the number of mobiles operating on a particular station on particular days is not a meaningful measure of usage, at least with respect to an integrated nationwide SMR network. In this regard, the service that RMD provides is premised on the availability of the system for a customer's use at every location to which the customer's activities may take him. Customer billing is not differentiated by the particular area in which the service may be used.

Furthermore, whether or not the service is used by a particular customer at a particular time in a particular area, the ubiquitous availability of the service remains essential to satisfy customer demand<sup>5</sup>. Accordingly, an appropriate

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<sup>3</sup> Id. at 27.

<sup>4</sup> Id.

<sup>5</sup> The importance of allowing a nationwide system to maintain the availability of its service to its customers nationwide, even in areas of limited demand, was recognized by the Commission in waivers granted for what is now the ARDIS system. See Letter from Richard S. Shiben, Acting Chief, Private Radio Bureau to Mitchell Lazarus, Esq., Mim. No. 7330-04 (December 28, 1989) (excess capacity on non-SMR system allowed to be sold commercially to nationwide customers, despite lack of loading in smaller markets).

measure of use is not whether a mobile unit "operated" on a system on a particular day, but whether a mobile unit was authorized to operate on the SMR system on such a day.<sup>6</sup>

A further problem with applying the proposed standard to nationwide systems is that it would calculate loading from the date of grant of the license for an individual location, when, in fact, customer loading cannot practically commence until after the critical mass of a national system at multiple locations has been established. RMD suggests that this "critical mass" level be set as the number of markets in which a system would be constructed in order to qualify as a national system.<sup>7</sup> If applicable, at all, a time period for loading could then be established (e.g., 4-6 years)<sup>8</sup> from the date that minimum nationwide construction must be completed.

This still leaves thorny questions regarding the level of loading that might be required for a nationwide system and what remedy would be appropriate with respect to nationwide systems that fall short of such loading standards. Given the pendency of the Phase II Proceeding, and in particular, the Commission's proposal, which RMD supports, to abolish loading requirements for nationwide systems and instead rely upon rigorous construction standards, consideration of these issues at this time may be premature. Clearly, a resolution of the Phase II Proceeding that results in the abolition of loading standards for nationwide systems would make these matters moot. Nevertheless, depending on the outcome of the Phase II Proceeding, the Commission should give consideration to expanding the

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<sup>6</sup> The proposed reliance upon billing records, while one evidence of authorized use, should be clarified so that units authorized, but not billed, for example the operators' own units, also count toward loading.

<sup>7</sup> In the Phase II Proceeding, the Commission proposed (at ¶ 20) a minimum construction requirement of 50 urban areas. In its Comments, RMD urged a higher threshold standard.

<sup>8</sup> Four years would be consistent with the Commission's current loading period of five years from initial licensing, with one year to construct. Six years would follow from current proposals to extend loading to seven years (one year to construct) for 900 MHz systems. See Notice of Proposed Rule Making, PR Docket No. 92-17 (February 18, 1992).


scope of this proceeding and/or initiating a second proceeding to address the specific application of loading standards to nationwide (and perhaps some regional) systems.

IV. CONCLUSION.

RMD supports the Commission's continuing efforts to reduce burdensome and unnecessary regulatory requirements such as end user licensing. RMD urges that the elimination of such licensing requirements should not, however, automatically lead to increases in the regulatory burdens of SMR licenses as to matters that are unrelated to loading. Furthermore, the alternatives proposed by the Commission for measuring loading based upon system usage at particular times and in particular locations are not practical or meaningful when applied to nationwide SMR networks. RMD urges the ultimate abolition of loading standards for nationwide networks; if not abolished, different standards that take into account the nature of nationwide system offerings will have to be developed.

Respectfully submitted,

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